

1 to 14. We may have gone through that.

2 Q Yeah, we talked about the corrections in
3 measure 13 already.

4 A Okay.

5 Q Were there any corrections in measure 14
6 of Bright Red Chords Original? Because I don't
7 believe we have spoken about that.

8 A I have F sharp written. That's the right
9 note.

10 Q Yeah, I have F sharp on your Original
11 version too. I don't believe -- that's not a
12 correction, then.

13 A Okay.

14 Q Okay, thank you, Dr. Stern.

15 Dr. Stern, could you please look at
16 Figure 4 in Exhibit 45 for the three compositions.
17 And please -- my question is whether you agree with
18 the scale degrees set forth in Figure 4 for the
19 three compositions on Exhibit 45?

20 A Yes.

21 Q Okay. Dr. Stern, would you agree that
22 there is an oscillation between 6 and 1 in the
23 pickup bar in Figure 4 of Domino, but there is no 6
24 1 oscillation in the pickup bar of either version of
25 Bright Red Chords in Figure 4; is that correct, sir?

1 A That's correct. The oscillation
2 corresponds to Figures 1 and 3 in all of the other
3 songs.

4 Q Dr. Stern, would you agree that the pickup
5 bar in both versions of Bright Red Chords in
6 Figure 4 contain scale degree 3, but scale degree 3
7 is nowhere in Figure 4 of Domino?

8 A Yes.

9 Q Dr. Stern, would you agree that the pickup
10 bar for both versions of Bright Red Chords in Figure
11 4 ends with scale degree 6, but the pickup bar for
12 Figure 4 of Domino ends with scale degree 1; is that
13 correct, sir?

14 A That's correct.

15 Q Dr. Stern, would you agree that both
16 versions of Bright Red Chords contain a sequence of
17 3 6 6 6 in Figure 4, but that sequence is nowhere
18 contained in Figure 4 of Domino?

19 A Well, well, there is a 1 before the 3 6 6
20 6 as well. You didn't mention that; right?

21 Q That's correct.

22 And that's another difference between
23 Figure 4 of Bright Red Chords and Figure 4 of
24 Domino; correct?

25 A Yes. Those figures don't correspond. The

1 correspondence between Domino and Bright Red Chords
2 is generally between, you know, the first phrase or
3 the third phrase, not the second and fourth. Except
4 for the ending points coincide. They both end with
5 B A on the second and fourth figures. B A being
6 transposed to D, considering all songs in the key of
7 D, of course.

8 MR. MOVIT: Could you please read back
9 Dr. Stern's last answer, please.

10 (The record was read.)

11 BY MR. MOVIT:

12 Q Dr. Stern, would you agree that no
13 composer is entitled to monopolize --

14 (Reporter clarification.)

15 BY MR. MOVIT:

16 Q Dr. Stern, do you agree that no composer
17 is entitled to monopolize ending a phrase on B A?

18 A I think they could have copyright
19 protection for it, if it is within a very specific
20 kind of melodic framework. Any notes can be
21 copyright protected when you have a very specific
22 kind of melody that ends with them.

23 Q Dr. Stern --

24 A Yes.

25 Q -- is Will Loomis the first composer to

1 end a phrase with B A?

2 A Of course not.

3 Q Okay.

4 A We all know that.

5 Q Countless compositions have ended a phrase
6 on B A; correct?

7 A We're talking about such small units, it
8 becomes very hard to -- if we're going to isolate it
9 down to, like: Shakespeare started a sentence with
10 the word "the." I mean, what are we going to get
11 out of this?

12 Q Again, Dr. Stern, my question is just that
13 countless composers have ended a phrase on B A;
14 correct?

15 A Abstractly, yeah, sure.

16 Q Okay. Dr. Stern, we're going to now talk
17 about the melodic rhythm in Figure 4.

18 A All right.

19 Q Um, Dr. Stern, the pickup notes in
20 Figure 4 of the two versions of Bright Red Chords
21 start on beat 2, but the pickup notes in Figure 4 of
22 Domino start on the second half of beat 1; correct?

23 MR. PEASE: Objection. Foundation. What
24 measure?

25 MR. MOVIT: We've established the measure --

1 MR. PEASE: This has been happening over and
2 over again. You have to reference the measure each
3 time you ask the question. That's foundation --

4 MR. MOVIT: And I did. When I asked Dr. Stern
5 what the pickup measures were for Figure 4 he agreed
6 that the pickup measures were Figure 15 of Bright
7 Red Chords Original, Figure 16 of Bright Red Chords
8 Final, measure 16 of Bright Red Chords Final and
9 measure 10 of Domino.

10 The witness did agree to that when I did
11 lay that foundation a few minutes ago, Ed.

12 THE WITNESS: I know where we are.

13 MR. PEASE: Maybe you do.

14 THE WITNESS: Like I said, it would just be
15 helpful, for future reference, to have the bar
16 numbers there for each one, since we're looking at a
17 whole bunch of different versions, you know.

18 BY MR. MOVIT:

19 Q Now if you would just look at -- I'll even
20 do it just with the measure numbers. Just look at
21 Exhibit 44, which is your Exhibit D, you know,
22 measure 15 of Bright Red Chords Original, measure 16
23 of Bright Red Chords Final and measure 10 of Domino.

24 A Yes.

25 Q And that's -- those are all the pickup

1 measures for the three compositions; correct?

2 A Yes.

3 Q Okay, thank you, sir.

4 Dr. Stern, do you agree that the pickup
5 notes for these two measures -- strike that. Yeah.

6 Would you agree, Dr. Stern, that with
7 respect to the measures we have just discussed, the
8 pickup notes in Bright Red Chords start on beat 2,
9 but the pickup notes in Domino start on the second
10 half of beat 1? Is that correct?

11 A That's correct. The Domino --

12 Q That's a difference between the
13 compositions with respect to these measures;
14 correct?

15 A With respect to these measures, again, the
16 material in bar 10 of Domino is related to Figure 1
17 or phrase 1 of BRC. So yes, they are
18 different starting points --

19 DR. FERRARA: But it is not identical, is it?

20 BY MR. MOVIT:

21 Q But, Dr. Stern, isn't it correct that none
22 of the pick-ups in Domino are identical to the
23 pickup in Figure 1, in either Bright Red Chords
24 Original or Bright Red Chords Final?

25 A They are basically in rhythm and pitch

1 content. There is just an extra syllable. It's a
2 tiny difference. It's not a difference -- it
3 doesn't make it a different melody. It just means
4 it's a little -- you know, an extra syllable in
5 essentially the same melody. That's all it is.

6 MR. MOVIT: If the court reporter could please
7 mark that answer for our reference later.

8 THE WITNESS: Because it's a very distinctive
9 sound. It's a combination of rhythms and notes.
10 It's distinctive. It's not just, you know, vague
11 material floating out there in the universe that
12 anyone has access to and copyright privilege to.

13 BY MR. MOVIT:

14 Q But that combination that you have just
15 referenced is still not identical, is it?

16 A Not in terms of the rhythm of the fourth
17 beat. Otherwise, yes, it is.

18 But there is two 8th notes where there was
19 a quarter note -- I mean, in Domino there is a
20 quarter note where there was two 8th notes in Bright
21 Red Chords on the fourth beat. So that is a
22 difference.

23 It's not a very significant difference in
24 terms of melodic identity -- establishing melodic
25 identity.

1 Q Dr. Stern?

2 A Yes.

3 Q You have identified in your expert report
4 what we have called Figure 1 today of Bright Red
5 Chords Original and Bright Red Chords Final. You
6 have identified that in your report as Figure A;
7 correct?

8 A Correct.

9 Q And, Dr. Stern, you have identified what
10 we have called today Figure 2 of Bright Red Chords
11 Original and Bright Red Chords Final, in your
12 report, you have referred to that as Figure B;
13 correct?

14 A Correct.

15 Q And what you have called Figure 3 --
16 strike that.

17 What we have called today Figure 3 of
18 Bright Red Chords Original and Bright Red Chords
19 Final, in your report you have again referred to
20 that as Figure A; correct?

21 A It was -- it's --

22 Q You labeled it as Figure A; correct?

23 A We're looking at BRC Original bar 13;
24 right?

25 Q Yeah. Bar 13, 14 of BRC Original --

1 A I got --

2 Q And bars --

3 THE REPORTER: I'm sorry, Jeff, I apologize. I
4 didn't get all that question.

5 BY MR. MOVIT:

6 Q I'll ask the question again.

7 Dr. Stern, you have identified bars 13, 14
8 of Bright Red Chords Original and 14, 15 as Bright
9 Red Chords Final, you have identified that as
10 Figure A in your report; correct?

11 A Yes. With -- notice there also little
12 symbols indicating variations or variants.

13 Q And, Dr. Stern, you have identified bars
14 15, 16 of Bright Red Chords Original and bars 16, 17
15 of Bright Red Chords Final, you have notated that as
16 Figure B in your report; correct?

17 A B1.

18 Q So it's a variation of B; correct --

19 A Correct.

20 Q -- in your opinion?

21 A Correct.

22 Q And all four of figures in verse 1 of
23 Domino you have identified in your opinion as
24 variations of Figure A; correct?

25 A That, plus the ending of Figure B. They

1 were varied versions. So I do have both of those
2 there, not just Figure A referenced.

3 Q So is it your opinion, Dr. Stern, that the
4 melodic development of the verse in Bright Red
5 Chords is essentially A B A B?

6 A Yes.

7 Q And the melodic development of Domino, is
8 it your opinion that it is essentially all
9 variations of A, i.e., A A A A?

10 A Yes, with the important addition that --
11 what struck me when I analyzed this was that you do
12 have, in the corresponding places of the Figures 2
13 and 4, the ending on the same notes A -- I think at
14 the end of Figure 2 you have the ending on the same
15 note A.

16 And then in Figure 4 you have the same
17 arrival on A, but then with the Bright Red Chords
18 Final he went on a couple extra notes.

19 But there are other -- in other words, I'm
20 looking at other parallelisms, not just the
21 Figure A.

22 But it's primarily variations on A, yes,
23 primarily.

24 Q So, Dr. Stern, it's fair to say that the
25 melodic development of the verse in Bright Red

1 Chords is different from the melodic development of
2 the verse in Domino?

3 A What do you mean by "melodic development
4 of the verse"?

5 Q Dr. Stern, you agree that every pickup in
6 Domino is the same; correct? They never change?

7 A Correct.

8 Q But that's not the case in Bright Red
9 Chords; correct?

10 A Correct.

11 Q Dr. Stern?

12 A Yes.

13 Q The narrative section of your report does
14 not contain any analysis of harmony; correct?

15 A Of harmony? I don't think so. I focused
16 primarily on melody, and some other things.

17 But I'd have to look through it. You
18 know, there is so much detail there I'd have to
19 through to see if I mentioned anything about
20 harmony, I may have. But I am not focused on that
21 in the analysis.

22 Q Dr. Stern, you agree that there is no
23 harmonic similarity between Bright Red Chords and
24 Domino; correct?

25 A There is -- they are quite different, but

1 I wouldn't there is no harmonic similarity. There
2 are some chords, like tonic chords, you know, in
3 common.

4 Q Dr. Stern, you would agree the most
5 popular songs have tonic chords; correct?

6 A Of course.

7 Q It's good that we can laugh a little bit.
8 That's good.

9 Dr. Stern, I would ask you to flip through
10 the narrative of your opinion and just please
11 confirm there is no discussion of harmony in it.

12 MR. PEASE: Is there a question pending?

13 THE WITNESS: Yes.

14 MR. MOVIT: Yes. I just asked the witness to
15 confirm that there is no discussion of harmony, no
16 analysis of harmony in the text passages of his
17 report.

18 MR. PEASE: Thank you.

19 THE WITNESS: I agree. My understanding is
20 that chords progressions are not copyrightable. So
21 I wasn't really concerned with that when I wrote up
22 the report, yes.

23 But I put the chords progressions in the
24 transcriptions.

25 Q Right.

1 Dr. Stern, your report does not proffer
2 any analysis of the overall structure of Bright Red
3 Chords and Domino; correct?

4 A It shows transcriptions which do show a
5 certain amount of like verse, chorus, pre-chorus,
6 you know, where some -- where these structural
7 elements occur.

8 And I do talk about phrase structure --
9 I'm sorry, did I -- was there another part to the
10 question that I didn't answer so far?

11 Q No, no, that was the question, Dr. Stern.

12 A Okay.

13 Q Dr. Stern, your report doesn't proffer any
14 comparison between the overall structure of Bright
15 Red Chords and Domino; correct?

16 A No, I did. I remember I talked about both
17 of them starting with -- at eight-bar unit form from
18 two bars --

19 (Reporter clarification.)

20 THE WITNESS: An initial verse unit of eight
21 bars, formed by four two-bar units, and I
22 compared -- that both songs have that. I did
23 compare that.

24 BY MR. MOVIT:

25 Q Dr. Stern, do you agree that your report

1 doesn't proffer any opinion regarding similarity
2 between the lyrics of the two works?

3 A Yes, I agree with that.

4 MR. MOVIT: Okay. I think it's a good time for
5 10-minute break. Is that fine with everyone? Is
6 everyone doing okay?

7 MR. PEASE: What is your time estimate at this
8 point?

9 MR. MOVIT: One moment, and I'll give you a
10 time estimate.

11 MR. PEASE: Okay.

12 THE VIDEOGRAPHER: Off the video, 3:50.

13 (A recess was taken from
14 3:50 p.m. to 4:15 p.m.)

15 THE VIDEOGRAPHER: Back on the video record,
16 4:15.

17 MR. MOVIT: Okay. Kim, can you please take out
18 what I told you internally was BBB document. That's
19 internal, that's not how we're marking it --

20 MS. JACKSON: Got it.

21 BY MR. MOVIT:

22 Q So now, Dr. Stern, please keep out
23 Exhibit 44.

24 A Okay.

25 Q And now we're going to mark another

1 document that I'd like you to look at
2 simultaneously.

3 Kim, could you hold it up to the camera
4 just to make sure it's the correct document?

5 Yes, perfect. Okay. That's our next
6 exhibit.

7 MS. JACKSON: Exhibit 46?

8 MR. MOVIT: 46? 46.

9 (Exhibit 46 was marked for
10 identification by the Reporter.)

11 BY MR. MOVIT:

12 Q Dr. Stern, do you have Exhibit 46 in front
13 of you?

14 A Yes.

15 Q Okay. And this is your comparison of
16 the first verses of Bright Red Chords -- what you
17 call the Final version of Bright Red Chords, not the
18 deposit copy Domino and Rush; correct?

19 A Correct.

20 Q Okay. And it's your understanding that
21 Rush is a song by the band Big Audio Dynamite too?
22 Is that your understanding?

23 A Yes.

24 Q Okay. Dr. Stern, just to expedite things
25 we believe we found one error in bars 11 and 15 of

1 Exhibit 46.

2 A Okay.

3 Q In those bars in your transcription in
4 Exhibit D for those bars, for Bright Red Chords
5 Final, you wrote F sharp E sharp F sharp, but in
6 Exhibit I, the transcription says E natural instead
7 of E sharp. That should be an E sharp; correct, in
8 Bright Red Chords --

9 A Yeah, I think you're right about that.

10 MR. PEASE: Wait a minute. I don't think are
11 you looking at the same document --

12 BY MR. MOVIT:

13 Q Compare those bars to Exhibit 44, please.

14 MR. PEASE: Could you --

15 BY MR. MOVIT:

16 Q 11 and 15 of Bright Red Chords Final.

17 A Yeah, they should be in E sharp.

18 Q Okay. Why don't we -- why don't you write
19 that --

20 A I consider these very minor vocal
21 embellishments, not very significant. Like --

22 Q All right. If you could, please ---

23 A Yes --

24 MR. PEASE: Are we talking about the second
25 bar, the -- what is written as an F sharp E F sharp,

1 and that should be the E sharp in the middle of
2 that, two 16th notes and an 8th note?

3 MR. MOVIT: Correct.

4 MR. PEASE: Okay. I saw that as well. I know
5 what you're talking about.

6 BY MR. MOVIT:

7 Q Okay, sir, if you agree that should be an
8 E sharp, could you write in the sharp in bars 11 and
9 15, please.

10 A Yes.

11 Q With a pen, so that that is part of our
12 exhibit now is with the sharp.

13 A These are very small vocal embellishments.
14 They don't have a lot of bearing on -- the main
15 thing is the arrival on the F sharp at that point.

16 MR. PEASE: Wait for a question.

17 BY MR. MOVIT:

18 Q Yes, please, sir, we'll get out of here
19 faster if you wait for a question, and just answer
20 the question I'm asking.

21 A Okay.

22 MR. MOVIT: Okay. Now, Kim, we'd like to mark
23 the next exhibit, which is the document I just sent
24 you.

25 MS. JACKSON: Okay.

1 MR. MOVIT: This will be 47.

2 (Exhibit 47 was marked for
3 identification by the Reporter.)

4 MR. MOVIT: Could the court reporter -- while
5 Dr. Stern is looking at this document, could the
6 court reporter please read back the last statement
7 that Dr. Stern said.

8 (The record was read.)

9 MR. MOVIT: Could you please read back
10 Dr. Stern's statement one more time.

11 (The record was reread.)

12 BY MR. MOVIT:

13 Q Dr. Stern, isn't it correct that at the
14 very same point in Rush the composition arrives at
15 an F sharp?

16 A Yes.

17 Q Dr. Stern, I'd now like you to please look
18 at Exhibit 47. And we will represent -- please let
19 us know if you have reason to disagree -- but we
20 will represent that the scale degrees for Bright Red
21 Chords, Bright Red Chords Original, Bright Red
22 Chords Final and Domino, are the same scale degrees
23 that were set forth in the earlier exhibit we marked
24 45. You can check that if you want, but we will
25 represent that they are the same.

1 And for your convenience we have written
2 the bar numbers to the right.

3 A I saw that. Thank you.

4 Yeah, I don't have the Original version of
5 Bright Red Chords on this Exhibit I, or what you're
6 calling Exhibit 46, so --

7 Q That's correct, sir --

8 A -- so I'm going to have to go back and
9 refer to this as well.

10 MR. PEASE: Is there a question pending?

11 THE WITNESS: I think he asked me to confirm
12 the scale degrees.

13 MR. PEASE: Okay.

14 BY MR. MOVIT:

15 Q No, sir. We just asked you to compare to
16 Exhibit 45, which was the earlier one-page sheet
17 with the scale degrees, which you confirmed was
18 accurate, sir.

19 A So I am not clear on what you're asking me
20 about 47.

21 Q Sure. We just wanted you to -- I
22 represented, for the sake of expedience --

23 A Yes.

24 Q -- that the Bright Red Chords Original,
25 Bright Red Chords Final and Domino scale degrees are

1 identical on Exhibit 45 and 47 --

2 A Oh, I see what you're saying --

3 Q -- and that the only difference between
4 Exhibit 45 and Exhibit 47 is that the corresponding
5 scale degrees for Rush are also listed.

6 A I see what you're saying. Let me check.

7 Yeah, I agree that the bottom three songs
8 in Exhibit 47 are the same in both, as the three in
9 the earlier exhibit.

10 Q Okay. sir, I would just like you to please
11 quickly confirm that you believe that the scale
12 degrees for Rush in Exhibit 47 are accurate,
13 vis-a-vis your Exhibit 46.

14 A I got that, thanks.

15 Yes, they are.

16 Q Okay, sir, if you could please look at
17 Exhibit 47.

18 A Yes.

19 Q With respect to Figure 1 do you agree that
20 there are six pitches in the pickup bar -- strike
21 that.

22 Do you agree that there are six notes in
23 the pickup bar in Rush and Domino, but seven notes
24 in the pickup bar in Bright Red Chords?

25 A Yes.

1 Q And, Dr. Stern, do you agree that there
2 are the same number of pickup notes in Figure 2 in
3 Rush, Bright Red Chords and Domino, of both Original
4 and Final of Bright Red Chords, Rush and Domino?

5 A Yes.

6 Q And, sir, do you agree that the pitches in
7 the second bar of Figure 2 are identical for Rush,
8 and both versions of Bright Red Chords? Identical
9 notes 6 and 5; correct?

10 A I'm just going back to check the Original.
11 That's not on this . . . yeah, we're talking about
12 the scale degrees, yes.

13 Yes, I'd agree.

14 Q And the rhythm is identical in the second
15 bar of Figure 2 for Rush and Bright Red Chords, both
16 versions; correct?

17 A I think Rush -- hold on. This was that
18 part in bar 12 of BRC Original, there is a dotted
19 quarter. It's a little longer, so --

20 Q Okay. Okay.

21 A -- but --

22 Q The rhythm is identical, is it not, in
23 the second bar of Figure 2 in Bright Red Chords
24 Final and Rush; correct?

25 A Correct.

1 Q But the rhythm is different from both Rush
2 and Bright Red Chords in the second bar of Figure 2
3 of Domino; correct?

4 A Correct.

5 Q And there is a scale degree of 1 in
6 the second bar of Figure 2 of Domino that is not
7 present in the second bar of Figure 2 of Rush or
8 either version of Bright Red Chords; correct?

9 A You have to clue me in better where you
10 are.

11 Q I'm saying that the second bar of Figure 2
12 of Domino, which is bar 7 --

13 A Okay.

14 Q -- contains a scale degree 1; correct?

15 A Correct.

16 Q Okay. And I'm saying that isn't it also
17 correct that scale degree 1 is not present in
18 the second bar of Figure 2 of Rush or either version
19 of Bright Red Chords?

20 And I have the corresponding bar numbers
21 next -- next to the equivalent place on the chart
22 for you to confirm that.

23 A It's correct.

24 Q Thank you, sir. Okay.

25 And Dr. Stern, with respect to Figure 1 --

1 the rhythm are identical?

2 A Yes.

3 Q But the pitches and the rhythm are not
4 identical in the second bar of Figure 4 of Domino;
5 correct?

6 A Correct.

7 Q Okay, Dr. Stern, if you would please go
8 back to your expert report, sir, which is the first
9 exhibit we marked today.

10 And if you could just kind of kind of keep
11 your finger on Exhibit F and Exhibit G of your
12 report. Those are the two sections in your report
13 which you talk about -- which you call drum usage;
14 correct, sir?

15 A F and G?

16 Q Yes, sir. That's the part of your report
17 where you talk about what you call drum usage;
18 correct?

19 A Correct.

20 Q In Exhibit F, sir, you opine that the drum
21 beat drops out for the start of the verses in Bright
22 Red Chords and Domino; correct?

23 A Correct -- well, not opinion. I stated
24 it.

25 Q Dr. Stern?

1 A Yes.

2 Q You refer to something as a drum break.
3 In your opinion -- by drum break do you mean where
4 the drums drop out?

5 A Yes.

6 Q Okay. So you're not referring to a drum
7 beat -- a drum break as that term is used in
8 hip-hop?

9 A No.

10 Q Okay. That's all. Just wanted to clarify
11 that. Okay.

12 So, Dr. Stern, do you agree that the
13 rhythm in the drum beat that comes in after the drum
14 break is different in the first sections in Bright
15 Red Chords and Domino?

16 A Could you -- you have to define it a
17 little more closely.

18 Q Let me rephrase that.

19 A Yes, please.

20 Q Would you agree in Bright Red Chords and
21 Domino the drum rhythm -- the drum beat is different
22 after the drum break in the two compositions?

23 A My recollection, and the way I transcribed
24 it, is that Domino has just a base drum, a square
25 four, square base drum; right?

1 Q Yes, sir.

2 A Bright Red Chords has the alternating base
3 and snare. I think there is more added on to it,
4 but I had actually had a track of just the drums, it
5 just had base and snare.

6 But it's still a square four beats in both
7 cases, but it is different drums configuration.

8 Q The square four beats is commonly referred
9 to as "four on the floor"; correct?

10 A Is that to do more with the four beat base
11 drum, though?

12 (Reporter clarification.)

13 BY MR. MOVIT:

14 Q The base drum or the kick -- the base drum
15 or the kick drum, that's known as "four on the
16 floor"; correct?

17 A That would be -- that's what I recall
18 being in Domino. But I have a snare coming in on
19 the -- later on Domino as well, so -- which is
20 closer.

21 But they are both very basic four beats.
22 But there is, you know, slightly different drum
23 configurations, as you can see.

24 Q Dr. Stern, do you agree that the full drum
25 beat in Bright Red Chords is present during the

1 introduction before verse 1, and then drops out
2 during the pickup bar --

3 A Yes.

4 Q -- of verse 1? Thus, the effect in Bright
5 Red Chords is that the drum beat is interrupted in
6 the pickup bar to the verse in Bright Red Chords;
7 correct?

8 A Yes.

9 Q However, in Domino there are no drums at
10 all until the first full bar of verse 1, so there is
11 no interruption; correct?

12 A Correct.

13 Q Moreover, when the drums enter in verse 1
14 in Domino, only the base drum plays until the second
15 stanza of the verse commences; correct?

16 A I'm sorry, where are you?

17 Q Sure. When the drums enter in verse 1 of
18 Domino, my question is: Isn't it correct that there
19 is only a base drum until the second stanza of the
20 verse?

21 A I don't recall the entire drum beats of
22 the whole -- that far. I just transcribed what was
23 there. So it comes in with just the base drum.

24 Q But in Bright Red Chords there is more
25 than just the base drum playing after the drum break

1 in verse 1; correct?

2 A Correct.

3 Q Dr. Stern --

4 A Yes.

5 Q -- do you recall that in the song Rush,
6 that just like in Domino -- strike that.

7 Okay. Now we're going to play the
8 composition Rush, rather than just ask you a
9 question about it before playing it.

10 So, Kim, this is on one of the CDs that
11 you received by FedEx today. If you hold on a
12 minute, I'll tell you which CD and which track.

13 MS. JACKSON: Okay.

14 MR. MOVIT: Kim, this is track 6 on the CD that
15 should be labeled Dr. Ferrara's Audio Exhibit 1.

16 MS. JACKSON: Okay, just a minute.

17 MR. MOVIT: And I'll represent that this is the
18 CD that we're going to mark as Audio Exhibit 1 to
19 Dr. Ferrara's report.

20 MS. JACKSON: Track 6.

21 MR. MOVIT: And we will mark this CD as the
22 next exhibit, of course.

23 (Exhibit 48 was marked for
24 identification by the Reporter.)

25 MS. JACKSON: Ready for play?

1 MR. MOVIT: Yes, we're ready.

2 Q And I'd ask you to please listen to the
3 drum elements while this is played because I'm going
4 to ask questions.

5 (A portion of the CD was played.)

6 MR. MOVIT: Kim, you can stop it. You can stop
7 it.

8 Q We wanted to just get through the verse.
9 I'm going to play it again, just the beginning of it
10 again.

11 So, Kim, if you could just play that track
12 again from the beginning, and I'll tell you when to
13 stop.

14 MS. JACKSON: Okay, starting.

15 (The CD was replayed.)

16 MR. MOVIT: Okay, you can stop it, Kim.

17 BY MR. MOVIT:

18 Q Dr. Stern, isn't it correct that in Rush
19 there are no drums until after the pickup?

20 A Yes.

21 Q Okay. Dr. Stern, isn't it correct that in
22 Domino there are no drums until after the pickup?

23 A Yes.

24 Q And that does not apply to either version
25 of Bright Red Chords; correct?

1 A Correct.

2 MR. MOVIT: Now we're going to play Rush
3 commencing at one minute 24 seconds, which precedes
4 the verse that begins at one minute 34 seconds.

5 And, again, we will ask Dr. Stern to
6 please pay particular attention to the drum elements
7 while we do this.

8 Kim, are you able to advance the track to
9 a minute 24?

10 MS. JACKSON: Possibly. Is it the same track
11 that I was just on?

12 MR. MOVIT: That's correct.

13 MS. JACKSON: Let me see. Hold on.

14 It started at a minute 17, will that work?

15 MR. MOVIT: That's just fine, thank you.

16 Starting at a minute 17.

17 MS. JACKSON: Okay. And tell me when to stop.

18 (A portion of the CD was played.)

19 MR. MOVIT: You can stop it.

20 Q Dr. Stern, isn't it a fact that the drums
21 start out -- drop out at the start of the pickup bar
22 to the verse that starts at a minute 34 in Rush?

23 A There is -- I heard the drums drop out for
24 the pickup bar itself.

25 Would that answer your question?

1 Q Yes, thank you, sir.

2 Dr. Stern, in your report you don't
3 mention that Rush contains the same drum beat
4 dropout at the start of the pickup bar that Domino
5 contains, do you?

6 A No.

7 Q Okay. You also don't mention in your
8 report, do you, that unlike Bright Red Chords Rush
9 and Domino both commence with no drum track;
10 correct?

11 A Yes.

12 Q Dr. Stern, Will Loomis did not invent the
13 idea of having the drum beat drop out at the start
14 of a verse, did he?

15 A (To Mr. Loomis) Did you?

16 No, it's --

17 Q Would you agree that having the drum beat
18 drop out at the start of a verse or in a section of
19 a song is a common arranging idea?

20 A Yes. This is just another addition. The
21 intention is we had a lot of melodic similarities,
22 and then here's a drum similarity.

23 MR. MOVIT: Okay. We're going to mark another
24 exhibit now which is Dr. Ferrara's report.

25 THE REPORTER: Kim, did you mark the CD as 47?

1 MR. PEASE: I have the CD as Exhibit 48.

2 MS. JACKSON: Right. 48 was the disk, and
3 now -- we're doing 49 now, Jeff?

4 MR. MOVIT: Could you please repeat the
5 question?

6 MS. JACKSON: The disc was Exhibit 48.

7 MR. MOVIT: Yes. And then Dr. Ferrara's report
8 will be 49, yes.

9 MS. JACKSON: Dr. Ferrara's report.

10 (Exhibit 49 was marked for
11 identification by the Reporter.)

12 MR. PEASE: Ferrara's report was the thick, the
13 one that you originally --

14 MS. JACKSON: This Defendants' Expert? Oh,
15 yes. That's 49.

16 MR. MOVIT: Kim, it says, "Defendants' Expert
17 Disclosures Pursuant to Rule 26(A)(2)," and kind of
18 goes down the page on the right --

19 MS. JACKSON: We got it.

20 MR. MOVIT: Thank you.

21 MR. PEASE: Thank you. That was Exhibit 49.

22 BY MR. MOVIT:

23 Q And my first question is just a simple yes
24 or no. Have you read this report?

25 A I received it after I had sent mine. I